

Amendment No. 1 to SB0214

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by deleting all language after the caption and by substituting instead the following:

WHEREAS, The Tobacco Health Fund Ad Hoc Committee (hereinafter "committee") was created pursuant to Public Chapter 999, Public Acts of 2000, in part to recommend uses and expenditures of funds in the Tobacco health reserve account and any future payments received pursuant to the master settlement entered into by Tennessee, other states and entities; and

WHEREAS, if fully executed, it is estimated that Tennessee will receive \$4.768 billion dollars in master settlement agreement payments over a twenty six (26) year period; and

WHEREAS, payments to be received by June 1, 2001, are estimated at \$353,500,000, of which one half was allocated by Public Chapter 999 to each the health reserve fund and the agriculture reserve fund; and

WHEREAS, the health committee was charged to recommend use of approximately \$180 million to have been received by June 1, 2001, as well as future funds; and

WHEREAS, The committee conducted five open meetings across the state and obtained input, testimony and extensive information from Tennessee citizens, professionals in medicine; child health, education and treatment; research; public funding; law; and public policy; and

WHEREAS, The committee reached consensus that the establishment of tobacco use prevention, education and related programs is crucial to the physical and economic wellbeing of Tennessee citizens, especially children; and

WHEREAS, The committee made findings that a properly funded and executed comprehensive statewide tobacco control program will substantially decrease suffering from tobacco-related illnesses, resulting in substantial reductions in future state and personal expenditures for medical costs and indirect costs associated with tobacco use; and

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WHEREAS, The committee reached consensus that master settlement funds should be used for statewide tobacco control programs under this act, should not be placed into the general fund, and should not be used for general funding of state government; and

WHEREAS, The committee concluded that one half of the settlement funds should be expended on tobacco control programs under this act and the remaining half should be held in an endowment account with resulting interest used to support such programs; and

WHEREAS, The severity of the problem is punctuated by Tennessee smoking data, which indicates, according to the 2000 Tennessee Tobacco Surveillance Program, that 23.2 % of Tennessee middle school students and 41.3 % of state high school students reported using some form of tobacco; and data from the Center for Disease Control ("CDC") of the United States Department of Health and Human Services that revealed that smoking among United States high school students increased from 27.5 % to 34.8% during 1991 to 1999; and

WHEREAS, Expert testimony demonstrates that adolescents who receive adequate life skills training make healthier decisions with respect to risky behavior such as tobacco and alcohol and drug use, necessitating effective statewide comprehensive school-based programs to prevent tobacco use, encourage cessation of tobacco use, and deter other risky behavior among this age group; and

WHEREAS, The committee concluded that the complexity of factors determining patterns of tobacco use, such as nicotine addiction, socioeconomic status, tobacco advertising, tobacco products price and cultural influences, encourages enactment of broad categories of statewide programs, with the delivery of recommended programs by local agencies, groups and

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organizations that are better able to design and evolve programs to meet community needs and to encourage community involvement; and

WHEREAS, The committee concludes that it is essential that a state department with existing expertise and statewide infrastructure oversee and monitor these complex functions and thus the department of health should be utilized to provide a funding process, to assist in preparation and approval of proposed plans, and to submit department approved plans to a board for its approval; and

WHEREAS, The committee concludes that a Tobacco Settlement Health Fund Board is needed to review and approve proposals, to review surveillance and evaluation reports and to report, jointly with the department of health, to the general assembly; now therefore,

SECTION 1. Tennessee Code Annotated, Section 9-4-5501(a), is amended by deleting the words "during fiscal year 2000--2001".

SECTION 2. Tennessee Code Annotated, Section 9-4-5501, is further amended by deleting subdivision (b)(3), and by inserting a new subdivision (b)(3) as follows:

(3)

(A) In addition to funds currently held in the health reserve account, one half (1/2) of the funds deposited per year in such account shall be transferred to the Tobacco Settlement Health Endowment Fund, created pursuant to this act. Such fund shall operate as a trust fund within the state treasury. Such funds shall not be deemed a part of, and shall be accounted separately from, any other moneys in the state treasury. Such funds shall be preserved and invested pursuant to and for the purposes of this act. The corpus of the trust shall not be

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expended for any purpose. Any revenues deposited in this fund shall remain in the fund until expended for purposes consistent with this act, and shall not revert to the general fund. All interest from the trust shall be transferred at the end of each calendar year to the health reserve account maintained pursuant to (3)(B), for expenditure in accordance with appropriations made by the general assembly and consistent with this act.

(B) The remaining one half (1/2) of funds deposited in the health reserve account shall be expended in accordance with appropriations made by the general assembly and consistent with this act. Withdrawals of funds from this account shall be made pursuant to Sections 4-51-108 and 109. Any fund balance that remains unexpended at the end of a fiscal year shall be carried forward in such account into the subsequent year.

SECTION 3. Tennessee Code Annotated, Section 9-4-5503, is amended by deleting that section in its entirety.

SECTION 4. Tennessee Code Annotated, Title 4, is amended by adding the following as a new chapter, to be designated as follows:

CHAPTER 51

Section 4-51-101. This chapter shall be known and may be cited as the "Tennessee Tobacco Settlement Health Fund Act."

Section 4-51-102. Unless the context clearly indicates some other meaning, the following shall apply:

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(1) "Board" means the tobacco settlement health endowment board created by this chapter;

(2) "Department" means the Tennessee department of health;

(3) "Fund" or "Health Fund" means the Tennessee tobacco settlement health endowment fund created by this chapter;

(4) "Master Settlement Agreement" means the tobacco litigation settlement agreement entered into by Tennessee and certain other states, United States territories and possessions, and participating tobacco manufacturers, dated November 23, 1998; and

(5) "State" means the state of Tennessee.

Section 4-51-103.

(a) The Tennessee Tobacco Settlement Health Endowment Fund is hereby created under the supervision of the Tobacco Settlement Health Fund Board (board").

(b) Such fund shall operate as a trust fund within the state treasury and shall be administered by the state treasurer. The terms of the trust instrument shall be approved by the attorney general and reporter.

(c) The trustees of the trust fund shall be the Tobacco Settlement Health Fund Board. The state treasurer, state comptroller and commissioner of the department of finance and administration shall serve as an advisory committee to such trustees. The state treasurer shall serve as chair of the advisory committee.

(d) The trustees shall set the investment policy of the trust in accordance with the laws, guidelines and policies which govern investments by the Tennessee consolidated

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retirement system. The state treasurer is responsible for investment of trust funds in accordance with the policy established by the trustees.

(e) The trust shall include funds appropriated for the purpose of funding the trust, individual contributions, corporate contributions and contributions by any other public or private entity. Interest from the trust shall be transferred at the end of each calendar year to the health reserve account maintained pursuant to section 9-4-5501(b)(3)(B), for expenditure in accordance with appropriations made by the general assembly and consistent this act.

(f) The corpus of the trust shall not be expended for any purpose. All moneys in the trust may be commingled for investment with other trust funds and other funds subject to investment by the state treasurer.

Section 4-51-104.

(a) There is hereby created a body, politic and corporate, to be known as the "Tennessee Tobacco Settlement Health Fund Board."

(b) The board shall be a public agency and an instrumentality of the state and shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and to be serving a public purpose in improving and otherwise promoting the health, welfare and prosperity of the people of the state.

(c)

(1) Its membership shall consist of the state treasurer, the commissioner of finance and administration, the commissioner of health, the commissioner of

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education, and their successors in office from time to time, by virtue of their incumbency in such offices and without further appointment or qualification, together with a total of six (6) persons who shall be appointed by the speaker of the senate, and six (6) persons who shall be appointed by the speaker of the house of representatives. The commissioner of health shall serve as an advisory nonvoting ex officio member.

(2) Board members appointed by the speakers of the house and the senate shall serve for a period of four (4) years, such terms to be staggered. Three (3) of the board members appointed by each of the speakers of the house and the senate shall have expertise in the area of chronic tobacco-related illnesses, tobacco use prevention or tobacco-related illness research. Such appointments shall be from the medical community and organizations such as the American Lung Association and the American Cancer Society. The remaining three (3) legislative appointments by each speaker shall be appointed with equal representation from each grand division of the state. Any legislator appointees from among the above members shall be nonvoting, ex officio members.

(d) All members of the board shall serve without compensation but shall be reimbursed in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

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(e) Any vacancy shall be filled for the remainder of the unexpired term. Each board member may be reappointed to subsequent terms.

(f) The department of health shall provide administrative support to the board.

(g) All departments and agencies of state government shall, upon request, assist the board in the exercise of its duties.

(h) A majority of the members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board. Voting upon action taken by the board shall be conducted by a majority vote of the members present at the meeting of the board. The board shall meet at the call of the chair and as may be otherwise provided in any bylaws of the board.

(i) The board may delegate to one (1) or more of its members or its officers such powers and duties as it may deem proper.

4-51-105.

(a) In addition to the powers granted by any other provisions of this chapter, the board shall have the powers necessary or convenient to carry out the purposes and provisions of this chapter including, but not limited to, the following express powers:

(1) Sue and be sued, at law or in equity; provided, that jurisdiction over the board against which an action is brought shall lie solely in a court of competent jurisdiction in Tennessee.

(2) Have a seal and alter the same at pleasure.

(3) Establish policy guidelines for the investment of the board's assets pursuant to Section 4-51-103.

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(4) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of the powers and duties of the board.

(5) Contract for the provision of all or any part of the services, including, but not limited to, legal and other personal and professional services, as may be necessary or convenient for the management and operation of the board or its assets or for otherwise carrying out its responsibilities under this chapter. Notwithstanding any provision of Section 8-6-106 or other law to the contrary, the board may employ legal counsel to advise or otherwise assist the board in any matter and to pay to any counsel so employed such compensation for services rendered as the board may deem just and such compensation may be paid out of the assets of the trust fund.

(6) Review and analyze the investment performance of the trust fund.

(7) Establish a withdrawal policy pursuant to this chapter for the purpose of determining the amount, which can be withdrawn from the trust fund and made available for appropriation.

(8) Adopt bylaws governing the conduct of its meetings and the use and application of its moneys and properties and for providing for other matters not inconsistent herewith or otherwise contrary to law.

(b) Any guidelines, policies or bylaws adopted or established pursuant to this section shall be exempt from the provisions of Title 4, Chapter 5.

4-51-106.

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In addition to any other duties imposed by this chapter, the board shall be responsible for the following:

- (1) Establishment of investment policy for the health fund;
- (2) Review and approval of program proposals for expenditure of tobacco fund moneys that have been initially approved by the department of health;
- (3) Development of policies, procedures, guidelines and rules and regulations with the assistance of the department of health;
- (4) General oversight of expenditures and all programs under this part;
- (5) To the extent possible, approval of programs based upon evaluation of prior success rates of such programs in other states;
- (6) To the extent possible, approval of continuation of programs based upon evaluation of the programs prior outcomes in this state; and
- (7) Conduct of necessary monitoring, review and reporting, with the assistance of the department of health, as required by this chapter.

4-51-107. The department of health shall be responsible for the following:

- (1) Development of criteria and conduct of initial approval processes for program proposals and requests for continuation of programs;
- (2) Development of evaluation and accountability processes for assessing a program's value when compared to the goals and purposes of this chapter; monitoring and final review of funded programs, including consideration of prior success rates of programs, both in other states and, to the extent available, in Tennessee;

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(3) Award of funding to programs approved by the board;

(4) Development of conflict of interest, quality control and accountability criteria for programs, plans, grantees and contractors and other persons.

(5) Development of report procedures, jointly with the board, to include data regarding progress of approved programs, comparisons among programs and geographical areas; proposed expenditures for upcoming fiscal years, and any recommendations for program changes;

(6) Development and implementation, with assistance from the department of education, of a school-based anti-smoking campaign targeted at persons under age eighteen (18), with an emphasis upon grades 5-12, subject to board approval. Such program shall be designed to discourage initial tobacco product use and encourage current tobacco users to quit through education, prevention and cessation campaigns. Such program shall include, but not be limited to, use of computer counter-marketing with screen savers or introductory computer screens containing anti-smoking messages. The program shall have significant evaluation components to measure results and accountability components. The department shall utilize the area health education centers ("AHEC") for the recruitment, training and placement of health educators in schools. The commissioner of the department shall have the authority to utilize other delivery systems in areas not covered by AHEC, including the regional health councils;

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(7) Assist the regional health councils ("RHCs") in formulating and implementing a comprehensive statewide prevention initiative for communities, based upon the Center for Disease Control ("CDC") model and subject to board approval. The department shall make recommendations to the board for allocations to the regional health councils that include each of the following factors in comparison to the remainder of the state:

- (A) population of the council;
- (B) geographic area of the council;
- (C) tobacco utilization rates;
- (D) tobacco product rates; and
- (E) success rates in reduction of use of tobacco products.

Initiatives shall include grants, contracts or similar agreements with local organizations to address local needs;

(8) Development of a process to receive, evaluate and make recommendations on specific research projects regarding tobacco addiction, prevention, treatment and related tobacco areas. As part of such processes, the department shall identify a principal institution to coordinate research with all participating universities, both public and private, and medical research centers, and identify areas in which entities have a competitive research advantage. The commissioner may hire or contract with an independent evaluator for such purpose, with the assistance of the department of finance and administration. Considerations in determining the principal institution shall include existence of

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currently established research programs in relevant tobacco-related research, cost of funding and similar factors, in the discretion of the department.

Participating entities shall make research data and findings funded under this chapter available for public use;

(9) Development and implementation of a statewide tobacco cessation program through local health departments with funds earmarked for the purpose of providing over-the-counter products to aid in smoking cessation such as nicotine patches and inhalers, and including counseling and follow-up;

(10) Implementation, through the office of minority health of the department, of a statewide counter-marketing campaign for persons who are targeted for disproportionate exposure to tobacco advertising, with an emphasis upon minorities and lower socioeconomic status groups; and

(11) Development, through in-house staff, contractors, or otherwise, of sufficient skill to conduct grant writing, research, data collection, comprehensive program and strategy planning, evaluation and related tasks.

4-51-108. Subject to the funding being provided therefor in the general appropriations act, in each year funds from the health fund shall be appropriated to the department of health to be expended in the following amounts and for the following categories, subject to the requirements of this chapter:

(a) Thirty two million dollars (\$32,000,000) for tobacco use prevention and education programs, which shall include a school-based anti-smoking campaign program that shall be allocated fifteen million dollars (\$15,000,000), and a

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comprehensive statewide community based initiative based upon the Center for Disease Control ("CDC") model for parents and other adults, which shall be allocated seventeen million dollars (\$17,000,000);

(b) Ten million dollars (\$10,000,000) for research regarding tobacco addiction, prevention, treatment and related areas, which shall focus on development of methods to discourage individuals from starting to use tobacco products and to assist individuals in tobacco use cessation. Such research shall include both applied behavioral science and medical science.

(c) Five million dollars (\$5,000,000) for a tobacco use cessation program developed and implemented by the department of health through local health departments, with funds earmarked for providing over-the-counter products to aid in smoking cessation such as nicotine patches and inhalers, and including counseling and follow-up;

(d) Three million dollars (\$3,000,000) for a statewide counter-marketing campaign for persons who are targeted for disproportionate exposure to tobacco advertising, with emphasis upon minorities and lower socioeconomic status groups, to be implemented by the department of health's office of minority health; and

(e) One million dollars (\$1,000,000) to the department of health to enable the department to apply for public and private grant funds, to establish a research coordination program, to develop a comprehensive statewide tobacco strategy, to conduct program evaluation and related tasks and to replace funds for enforcement of The Prevention of Youth Access to Tobacco Act of 1994.

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4-51-109.

Subject to funding being provided in the general appropriations act, in each year funds shall be expended as follows:

(1)

(A) To the extent federal financial participation is available, thirty million dollars (\$30,000,000) shall be appropriated to the TennCare Bureau of the department of health to be allocated to the following hospitals for the purpose of providing medical assistance related to uncompensated tobacco related illness care:

- (i) The Erlanger Medical Center, Chattanooga;
- (ii) The Johnson City Medical Center, Johnson City;
- (iii) The Metropolitan-Nashville General Hospital, Nashville;
- (iv) The Regional Medical Center, Memphis;
- (v) The University of Tennessee Hospital, Knoxville; and
- (vi) The Vanderbilt University Medical Center, Nashville.

Any resulting federal financial participation funds shall be allocated for distribution to Tennessee hospitals, other than the six (6) listed above, that have provided uncompensated tobacco-related treatment and care. The comptroller of the treasury and the commissioner of finance and administration shall develop a payment methodology and recommend the appropriate distribution of funds based upon the pro rata share of uncompensated tobacco-related illness care

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provided by the individual hospital in comparison to the aggregate amount of such uncompensated care within the group.

(B) To the extent federal financial participation is not available, the thirty million dollars (\$30,000,000) provided for in this subdivision shall be directly distributed by the department of finance and administration to the six (6) hospitals listed in this section rather than by the TennCare Bureau.

(2) One million dollars (\$1,000,000) shall be distributed by the board in direct grants for special projects, with emphasis upon programs working with youth. The department shall conduct initial review and approval of grant applications and other functions as directed by the board.

(3) One million dollars (\$1,000,000) shall be distributed by the board as a direct grant for initiation or support of a Tennessee lung center. The department shall conduct initial review and approval of grant applications and other functions as directed by the board.

Section 4-51-110. The board, with the assistance of the department, shall jointly report to the governor and the general assembly, within thirty (30) days of the close of each fiscal year, regarding:

(1) The amount of funds then currently available for expenditure, and the amount estimated to be available in the subsequent fiscal year, in the health reserve account pursuant to section 9-4-5501(b)(3)(B);

(2) The amount of funds in the Tobacco settlement health endowment fund pursuant to section 9-4-5501(b)(3)(A);

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(3) The recommendations of the board for expenditure in the subsequent fiscal year;

(4) Expenditures in the prior fiscal year; program descriptions, evaluations and results; and

(5) Any recommendations for amendment or modification of this chapter.

SECTION 5. Tennessee Code Annotated, Section 4-31-205, is amended by adding the following as a new subsection to be designated as follows:

(h) The authority is authorized to issue bonds pursuant to the provisions of this section secured by a pledge of one million dollars (\$1,000,000) from the agricultural reserve account of the tobacco master settlement agreement, pursuant to section 9-4-5501(b)(1) and (2) for the purpose of funding costs associated with the planning and design of a veterans' home to be located in east Tennessee. Revenues in excess of necessary operating costs received from operation of such veterans' home shall be returned to the authority for use consistent with this part.

SECTION 6. The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this Act. All such rules and regulations shall be promulgated in accordance with the provisions of title 4, chapter 5.

SECTION 7. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 8. The moneys specified for expenditure under this act are intended to be and shall be in addition to all funds that are being expended on the particular programs at the

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time this act takes effect. To that end, the comptroller of the treasury is directed to conduct a maintenance of effort audit to ensure that no funds are shifted knowingly or unknowingly so as to supplant or dilute in any form or fashion the letter or spirit of this act.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect upon July 1, 2001, the public welfare requiring it.